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ESPERANZA 1 OF 1

## **DECLARATION FOR COVENANTS, CONDITIONS & RESTRICTIONS Lindsay Crossing**

DECLARATION FOR  
CONVENANTS, CONDITIONS AND RESTRICTIONS  
Lindsay Crossing

THIS DECLARATION is made on the 3rd day of July, 2001 by Maracay Lindsay Crossing, L.L.C., an Arizona Limited Liability Company.

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property (the "Property") located in the City of Mesa, Maricopa County, Arizona, which is more particularly described in the Plat as Lots 1 through 107, **Maracay Lindsay Crossing**, according to Book 563, page 46, records of Maricopa County, Arizona.

WHEREAS, Declarant will form a nonprofit corporation (the "Association") for the purpose of acquiring, constructing, operating, managing and maintaining any Common Areas on the Property, establishing, levying, collecting and dispersing the assessments and other charges imposed hereunder, and administering and enforcing this Declaration and enforcing the use and other restrictions imposed on various parts of the Property.

WHEREAS, Declarant desires to impose certain covenants, conditions and restrictions upon the property in order to establish a general scheme for the development, sale, use and enjoyment of the Property for the purpose of enhancing and protecting the value, desirability and quality of life within said Property;

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NOW, THEREFORE, Declarant hereby declares that the Property shall be held, developed, sold and conveyed subject to the easements, restrictions, covenants, and conditions contained in this Declaration that are for the purpose of protecting the value and desirability of, and that shall run with said Property and be binding on all parties having any right, title or interest in said Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

## ARTICLE I

### DEFINITIONS

- 1.1 "Alleged Defect" shall mean alleged defect(s) caused by the negligence of Developers, or their respective agents, consultants, contractors or subcontractors, in the planning, design, engineering, grading, construction, or other development of any portion of the Common Areas, any Lot or residence, and/or any Improvements constructed within the Property.
- 1.2 "Architectural Committee" means the committee established by the Board pursuant to Section 3.4 of this Declaration.
- 1.3 "Architectural Committee Rules" means the rules, if any, adopted by the Architectural Committee.
- 1.4 "Articles" means the Articles of Incorporation of the Association that will be filed in the Office of the Corporation Commission of the State of Arizona, and as said Articles may be amended from time to time.

- 1.4 "Articles" means the Articles of Incorporation of the Association that will be filed in the Office of the Corporation Commission of the State of Arizona, and as said Articles may be amended from time to time.
- 1.5 "Assessments" means the annual and special assessments levied and assessed against each Lot pursuant to this Declaration.
- 1.6 "Association" means the Arizona nonprofit corporation to be organized by the Declarant to administer and enforce the Project Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns. Declarant intends to organize the Association under the name of Eagle Cove Community Association, but if such name is not available, Declarant may organize the Association under such other name as the Declarant deems appropriate.
- 1.7 "Association Rules" means the Rules and Regulations adopted by the Association, as the same may be amended from time to time.
- 1.8 "Board" means the Board of Directors of the Association.
- 1.9 "Bylaws" means the Bylaws of the Association, and as such Bylaws may be amended from time to time.
- 1.10 "Common Area" and "Common Areas" shall mean all real property (including easements) and the improvements or amenities thereon, owned, controlled or operated by or created for the benefit of the Association (including without limitation areas identified on the Plat to be used for private streets, landscaping, drainage, Unofficial Document control, open areas and the like), or other rights running to the benefit of the Association and intended for the use and enjoyment of the Owners and/or Residents of the Property, or with respect to which the Association has administrative, maintenance or other similar responsibilities.
- 1.11 "Declarant" means Maracay Lindsay Crossing, L.L.C., an Arizona limited liability company, or any person or entity to whom any part or all of Declarant's rights reserved to the Declarant hereunder are assigned. The Declarant's rights shall only be assigned by a written, recorded instrument expressly assigning those rights.
- 1.12 "Declaration" means this Declaration of Covenants, Conditions and Restrictions, and as it may be amended from time to time.
- 1.13 "First Mortgage" means any mortgage or deed of trust with first priority over any other mortgage or deed of trust.
- 1.14 "Improvement" or "Improvements" means buildings, driveways, roads, parking areas, fences, walls, rocks, hedges, plantings, planted trees and shrubs, and all other structures or landscaping improvements of every type and kind.
- 1.15 "Lot" means any parcel or real property designated as a Lot on the Plat and which is covered by this Declaration.
- 1.16 "Member" means any person, corporation, partnership, joint venture, or other legal entity who owns one or more Lots in the Project and is therefore a Member of the Association.

- 1.17 "Membership" shall mean a Membership in the Association and the rights granted to the Owners hereof to participate in the Association
- 1.18 "Never Occupied Lot" is one that is not a Once Occupied Lot.
- 1.19 "Once Occupied Lot" is any Lot with a dwelling thereon:
- (a) that is or has been occupied by someone residing thereon or,
  - (b) that has been conveyed by the Declarant to a Purchaser or regarding which a contract for sale to Purchaser has been recorded in the Office of the Maricopa County Recorder.
- 1.20 "Owner" means the record owner, whether one or more persons or entities, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include (i) persons or entities having an interest in a Lot merely as security for the performance of an obligation, or (ii) a lessee or tenant of a Lot.

Owner shall include a purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale or any similar contract through which a seller has conveyed to a purchaser equitable title in a Lot under which the seller is obligated to convey to the purchaser the remainder of seller's title in the Lot, whether legal or equitable, on payment in full of all monies due under the contract. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions, or similar executory contracts that are intended to control the rights and obligations of the parties to the transaction.

In the case of Lots the fee simple title to which is vested in a Trustee pursuant to Arizona Revised Statutes, Section 33-801, et. Seq., the Trustor under the deed of trust shall be deemed to be the Owner. In the case of Lots the fee simple title to which is vested in a Trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

- 1.21 "Person" shall mean a natural person, corporation, business trust, estate, trust, limited liability company, partnership, association, joint venture, municipality, governmental subdivision or agency or other legal or commercial entity.
- 1.22 "Plat" means the plat of survey of Lots 1 through 107, **Lindsay Crossing**, according to Book 563, page 46, records of Maricopa County, Arizona and all amendments thereto.
- 1.23 "Project Documents" means this Declaration and the Articles, Bylaws, Association Rules, and Architectural Committee Rules, as set forth in Section 10.5.
- 1.24 "Property" or "Project" means the real property described on the plat together with all buildings and other Improvements located thereon, and all easements, rights and appurtenances belonging thereto.

- 1.25 "Purchaser" means any person other than the Declarant, who by means of a voluntary transfer becomes the Owner of a Lot, except for (i) a Person who purchases a Lot and then leases it to the Declarant for use as a model in connection with the sale or lease of other Lots or (ii) a Person who, in addition to purchasing a Lot, is assigned any or all of the Declarant's rights under this Declaration.
- 1.26 "Reserves" or "Reserve Funds" shall mean those amounts specifically collected by the Declarant and/or the Association for, and in anticipation of, future expenses associated with (i) the proper operation and maintenance of the Association and (ii) repair, replacement and maintenance of the Common Areas and Improvements thereon. "Reserve Account" shall refer to the account (or, series of accounts) maintained by the Declarant and/or the Association for the segregation and retention of Reserve Funds.
- 1.27 "Resident" shall mean:
- (a) Each occupant actually residing on any part of the Property; and
  - (b) Members of the immediate family of each Owner actually living in the same household with such Owner.

Subject to such rules and regulations as the Association may hereafter specify, the term "Resident" also shall include the guests or invitees of any such Owner, if and to the extent the Board in its absolute discretion by resolution so directs, provided, however, that no guest or invitee may stay with an Owner, in a dwelling unit or on a Lot for more than thirty (30) days in total during any calendar year.

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- 1.28 "Single Family" means an individual living alone, a group of two or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, together with their domestic servants, who maintain a common household in a dwelling.
- 1.29 "Special Use Fees" shall mean special fees authorized by this Declaration which an Owner, Occupant, Resident or any other person is obligated to pay to the Association over, above and in addition to any Annual Assessments, Use Assessments, Special Assessments or Maintenance Charges imposed or payable hereunder.
- 1.30 "Single Family Residential Use" means the occupation or use of a residence by a Single Family in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state, county or municipal statutes, ordinances, rules and regulations.
- 1.31 "Visible From Neighboring Property" means, with respect to any given object, that such object is or would be visible to a person six feet tall, standing on any part of such neighboring property at an elevation no greater than the base of the object being viewed.

## ARTICLE 2

### PROPERTY SUBJECT TO THE DECLARATION

- 2.1 **GENERAL DECLARATION:** Declarant intends to develop the Property generally in accordance with the Plat and to sell and convey the Lots thereof. Declarant hereby declares that all of the Property is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration, as amended or modified from time to time; provided, however, that any property owned by or dedicated to a governmental agency or the public shall not be subject to this Declaration while owned by any such governmental entity or the public, except that any restrictions imposed in this Declaration upon the Owners concerning the use and maintenance of such property shall be applicable at all times. This Declaration is declared and agreed to be in furtherance of a general plan for the development and sale of the Property and is established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property. This Declaration shall run with the Property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, and all Owners of the Property and their successors in interest.
- 2.2 **LIMITATION OF RESTRICTIONS ON DECLARANT:** Declarant is undertaking the work of constructing residential dwelling units and incidental improvements upon the Property. The completion of that work and the sale, rental and other disposal of said dwelling units is essential to the establishment and welfare of the Property as a residential community. In order that said work may be completed and dwelling units constructed on the Lots and the Property established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:
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- (a) Prevent the Declarant, its contractors or subcontractors from doing on the Property whatever is necessary or advisable in connection with the completion of said work; or
  - (b) Prevent the Declarant or its representatives from erecting, constructing and maintaining, on any part of the Property, such structures as may be reasonable or necessary for the conduct of the business of completing said work and establishing the Property as a residential community and disposing of the same by sale, lease or otherwise; or
  - (c) Prevent the Declarant from maintaining such sign or signs on any of the Property as may be reasonable or necessary for the sale, lease or disposition thereof, including, but not limited to, such sign or signs as may be required or requested by the institution(s) providing financing for the Project.

The foregoing limitations of the application of the restrictions to the Declarant shall terminate upon the sale of the Declarant's entire interest in the Property. So long as Declarant, its successors and assigns, owns one or more of the Lots, Declarant, its successors and assigns shall, except as specifically provided in this Declaration, be subject to the provisions of this Declaration. Declarant shall use reasonable efforts to avoid disturbing the Owners' use and enjoyment of their Lots while it is completing any work necessary on the Lots and Common Area. In addition, nothing in this Declaration shall be construed to prevent Declarant from modifying the Plat or any portion thereof.

- 2.3 ASSOCIATION BOUND: Upon issuance of a Certificate of Incorporation by the Arizona Corporation Commission to the Association, the Covenants shall be binding upon and shall benefit the Association.

### ARTICLE 3

#### THE ASSOCIATION: RIGHTS AND DUTIES, MEMBERSHIP AND VOTING RIGHTS

- 3.1 RIGHTS, POWERS and DUTIES: The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration together with such rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in this Declaration. Unless the Project Documents specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board of Directors.
- 3.2 BOARD of DIRECTORS and OFFICERS: The affairs of the Association shall be conducted by a Board of Directors and such officers and committees as the Board may elect or appoint, in accordance with the Articles and Bylaws.
- 3.3 ASSOCIATION RULES: The Board, may from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations. The Association Rules may restrict and govern the use of any area by any Owner, by the family of such Owner, or by any invitee, licensee or lessee of such Owner; Unofficial Document however, that the Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.
- 3.4 ARCHITECTURAL COMMITTEE:
- (a) *Establishment.* The Board shall establish an Architectural Committee and procedural rules and regulations to direct the Architectural Committee in the performance of its duties. The Architectural Committee shall consist of three (3) regular members and an alternate member, each appointed by the Board. The appointees need not be Owners or Residents and need not possess any special qualifications except such as the Board may, in its sole discretion, require. The Board may replace any member of an Architectural Committee at any time with or without cause. In the event of the death or resignation of any member of the Architectural Committee, the Board shall replace said member within ninety (90) days following such death or resignation. Pending the replacement of such deceased or resigned member, the remaining member or members of the Architectural Committee shall have full authority to act as the Architectural Committee under this Declaration.
- (b) *Purpose.* The purpose of the Architectural Committee is to maintain uniformity of architectural and landscaping standards throughout the Property and thereby enhance the aesthetic and economic value of the Property. The Architectural Committee is hereby empowered to supplement and amend the Design Guidelines and its procedural rules and regulations to the extent and with the frequency it deems necessary; provided, however,

that such modifications are in general conformity with the standards set forth in this Declaration. Neither the Architectural Committee, Declarant nor Association is assuming any liability for the economic value nor structural integrity of any improvement. The Architectural Committee's decisions shall pertain solely to the matters set forth herein and shall in no way constitute a representation or warranty of economic value or structural integrity. All decisions shall be made in the Architectural Committee's sole discretion and shall be final and conclusive.

- (c) *Operation/Authority.* It shall be the duty of the Architectural Committee to consider and act upon all proposals and plans submitted to it pursuant to this Declaration. An Architectural Committee shall hold regular meetings in accordance with its procedural rules and regulations. A quorum for such meetings shall consist of two (2) members and an affirmative vote of two (2) of the members of the Architectural Committee shall be necessary for any decision. A duly appointed alternate member may participate in any meeting in which there is not a quorum of regular members present, may constitute a quorum by his/her presence and shall have all the authority of a regular member while so participating. The Architectural Committee shall review all applications submitted to it and shall furnish a written decision to the applicant setting forth the reasons for its decision and the nature of any objections. If the Architectural Committee fails to furnish a written decision within thirty (30) calendar days after an application has been submitted or resubmitted to it, then the application shall be deemed approved. The Architectural Committee shall have broad discretionary powers in determining whether an application is in conformance with the Design Guidelines. In addition, the Architectural Committee may disapprove any application if it, in its discretion, believes the applicant has not supplied it or accurate information for the Architectural Committee to exercise the judgment required by this Declaration. The Architectural Committee has the authority to grant variances to the Design Guidelines by an affirmative vote of the majority of the members of the Architectural Committee. The Architectural Committee shall keep complete written records of all applications for approval submitted to it (including one (1) set of all preliminary sketches and all architectural plans) in connection with all actions taken by it under the provisions of the Design Guidelines. All such records shall be maintained for a minimum of three (3) years after approval or disapproval.
- (d) *Fee.* The Board shall have the right, in its sole discretion, to assess against applicants a processing fee to defer the costs incurred by the Architectural Committee in considering any requests for approval submitted to it. If imposed, the fee shall be in such amount and payable in accordance with such schedule as reasonably determined by the Architectural Committee. Any processing fee not paid in full at the time of submittal of the request for approval shall be added to, and become a part of, the Assessment to which the requesting Owner and the Owner's Lot is subject, and shall be secured by a lien.
- (e) *Limited Liability of Design Review Committee Approval.* All plans, drawings and specifications approved by the Architectural Committee are not approved for engineering, design or architectural competence. Through its approval of such plans, drawings and specifications, the Architectural Committee does not assume liability or responsibility therefor or for any defect in any structure constructed from such plans, drawings and specifications. Declarant, members of the Architectural Committee and



members of the Board shall not be liable to the Association, any Owner or any other entity for any damage, loss or prejudice suffered or claimed because of:

- (i) the approval or disapproval of any plans, drawings or specifications, whether or not defective: or
- (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings or specifications.
- (f) *Waiver.* The approval by the Architectural Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of an Architectural Committee, shall not be deemed to constitute a waiver of any right to withhold approval of a similar plan, drawing, specification or matter subsequently submitted for approval.
- (g) *Nonapplicability to Declarant.* The provisions of this Article are not to apply to any Lots owned by Declarant.

3.5 IDENTITY of MEMBERS: Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a Member of the Association and shall remain a Member of the Association until such time as his ownership ceases for any reason, at which time his membership shall automatically cease.

3.6 TRANSFER of MEMBERSHIP: Membership in the Association shall be appurtenant to each Lot and a membership in the Association Unofficial Document be transferred, pledged or alienated in any way, except upon the sale of a Lot and then only to such Purchaser, or by intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. Any attempt to make a prohibited transfer shall be void and shall not be reflected upon the books and records of the Association.

3.7 CLASSES of MEMBERS: The Association shall have two (2) classes of voting membership.

CLASS A shall be all Owners of Lots, with the exception of the Declarant until the termination of the Class B membership. Each Class A Member shall be entitled to one (1) vote for each Lot owned, subject to the authority of the Board to suspend such voting rights as provided herein.

CLASS B shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot owned by the Declarant. The Class B membership shall cease and be converted to Class A membership with the Declarant being entitled to one (1) vote for each Lot owned by the Declarant on the happening of the earlier of the following:

- (a) Sixty (60) days after the date on which seventy-five percent (75%) of the Lots have been conveyed to Class A Members; or
- (b) When the Declarant notifies the Association in writing that it relinquishes its Class B membership; or
- (c) January 1, 2010

- 3.8 **JOINT MEMBERSHIP:** When more than one person is the Owner of any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) ballot be cast with respect to any Lot. The vote or votes for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a ballot representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot. In the event more than one ballot is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void.
- 3.9 **CORPORATE OWNERSHIP:** In the event any Lot is owned by a corporation, partnership or other association, the corporation, partnership or association shall be a Member and shall designate in writing at the time of acquisition of the Lot an individual who shall have the power to vote said membership, and in the absence of such general partner or chief executive officer of such corporation, partnership or association shall have the power to vote for that membership.
- 3.10 **SUSPENSION of VOTING RIGHTS:** In the event any Owner is in arrears in the payment of any Assessments or other amounts due under any of the provisions of the Project Documents for a period of ten (10) days, said Owner's right to vote as a Member of the Association shall be automatically suspended and shall remain suspended until all payments, including accrued interest, late charges and attorney's fees, are brought current. In addition, the Board may suspend an Owner's right to vote for a period not to exceed sixty (60) days for any other infractions of the Project Documents.
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- 3.11 **PERSONAL LIABILITY:** No member of the Board or of any committee of the Association, no officer of the Association, and no manager or other employee of the Association shall be personally liable to any Member, or to any other person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, the manager, any representative or employee of the Association or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section 3.11 shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.
- 3.12 **FUNDS:** All funds received by the Association and the titles of all properties acquired by the Association shall be held in trust for the Members of the Association in accordance with this Declaration, the Articles and the Bylaws.

## ARTICLE 4

### CONVENANT FOR MAINTENANCE ASSESSMENTS

- 4.1 **CREATION of the LIEN and PERSONAL OBLIGATION of ASSESSMENTS:** The Declarant, for each Lot owned by the Declarant, hereby covenant, and each Owner of a Lot, by becoming the Owner thereof, whether or not it is expressed in the deed or other instrument by which the Owner acquired ownership of the Lot, is deemed to covenant and agree to pay to the Association annual assessments, special assessments and other charges as set forth herein. The Assessments, together with interest, late fees, costs and reasonable attorney's fees, shall be a charge on the land

and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, late fees, costs and reasonable attorney's fees, also shall be the personal obligation of the Owner of such Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

- 4.2 **PURPOSE of the ASSESSMENT:** The Assessments levied by the Association shall be used exclusively for (a) the upkeep, maintenance and repair of Common Area; (b) promoting the health, safety and welfare of the Owners and residents of Lots within the Project; (c) the performance and exercise by the Association of its rights, duties and obligations under the Project Documents; and (d) the upkeep maintenance and repair of property assigned by the City of Mesa as Association responsibility including, but not limited to, all landscaping within the open spaces, collector and arterial street right-of-ways. No diminution or abatement of Assessments or set-off shall be claimed or allowed by reason of the alleged failure of the Association or the Board to take some action or perform some function under this Declaration, the Articles, Bylaws or any other controlling document, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law or ordinance or with any order or directive of any municipal or other governmental authority.
- 4.3 **ANNUAL ASSESSMENTS:** Annual Assessments shall include a reasonable Reserve Fund for taxes, insurance, maintenance, repairs and replacement of the Common Areas and all other areas for which the Association is responsible. All Reserve Funds collected by the Association shall be deposited into one (1) or more federally insured bank accounts ("Reserve Account(s)") and shall be segregated from the Association's Unofficial Document operating account(s).
- (a) *Annual Budget; Delivery to Membership.* The Board shall annually determine and fix the amount of the Annual Assessment against each Lot and shall notify the Owner of each Lot, in writing, as to (i) the amount of such Annual Assessment and (ii) the fractional payment cycle for the Annual Assessment (e.g., quarterly or monthly). The written notice shall be provided to each Owner not less than thirty (30) days prior to the date that such Annual Assessment is to commence. Along with such notification, the Board shall provide the Owners with a proposed budget for the next fiscal year and a summary of the Association's finances for the previous fiscal year. In addition to including amounts for the estimated common expenses and cash requirements of the Association, each budget shall also provide for a reserve for contingencies and a reserve for replacements, all in such amounts as shall be determined by the Board to be reasonably adequate, taking into account the number and nature of replaceable property within the Common Areas and other areas for which the Association is responsible, the expected life of such item and each item's expected repair or replacement cost. Not later than sixty (60) days following the meeting of the Board at which the Board adopts the annual budget for the year in question, the Board shall cause a copy of the budget and statement of the amount of the Annual Assessment to be levied against the Owner's Lot for the fiscal year in question to be delivered or mailed to each Owner. In the event the Board fails to adopt a budget for any fiscal year prior to commencement of the fiscal year, then until and unless a budget is adopted, the budget (and the amount of the Annual Assessment provided for therein) for the year immediately preceding shall remain in effect.

- (b) *Initial Annual Assessment.* In the year of the close of escrow on the sale of the first Lot to a purchaser, the maximum Annual Assessment per Lot shall be Six Hundred Dollars (\$600.00) and the Annual Assessment shall be prorated through the date of the close of escrow for each Lot based on the number of full and partial months remaining in the relevant billing cycle (e.g., quarterly).
- (c) *Maximum Increase in Annual Assessment.* Except as to the first Annual Assessment, the Annual Assessment may be neither increased by more than twenty percent (20%) above, nor decreased by more than twenty percent (20%) below the Annual Assessment for the previous year, without the vote or written consent of sixty-seven percent (67%) of the membership present and voting at a meeting at which a quorum equal to fifty-one percent (51%) of the Members are present in person or by proxy. Notwithstanding the foregoing, the Board may, without the approval of the Members, increase the maximum Annual Assessment for any fiscal year by an amount sufficient to permit the Board to cover any increase over the preceding fiscal year for: (i) premiums for any insurance coverage required by the Declaration to be maintained by the Association; (ii) taxes on the Common Areas or (iii) charges for utility services necessary to the Association's performance of its obligations under this Declaration. If item (i), (ii) or (iii) in the preceding sentence results in an increase in the maximum Annual Assessment, such increase shall be permitted notwithstanding the fact that the resulting increase in maximum Annual Assessment is at a rate greater than otherwise permitted by the preceding portions of this Section. Nothing herein shall obligate the Board to levy, in any fiscal year, an Annual Assessments in a full amount of the maximum Annual Assessment for the fiscal year, and the election by the Board not to levy Annual Assessments in a full amount Unofficial Document maximum Annual Assessment for the fiscal year shall not prevent the Board from levying Annual Assessments in subsequent years in the full amount of the maximum Annual Assessments for the subsequent fiscal year (as determined in accordance with this Section). In the event that for any fiscal year, the Board elects to levy an Annual Assessment at less than the full amount of the maximum Annual Assessment for the fiscal year, the Board may, if in its reasonable discretion circumstances so warrant, subsequently levy a supplemental Annual Assessment during the same fiscal year so long as the total of the Annual Assessments levied during the fiscal year have not exceeded the maximum Annual Assessment for such fiscal year.
- (d) *Reserve Studies.* The Board shall periodically obtain reserve studies and updates to assist the Board in determining an appropriate amount for repair and replacement reserves for the Association; provided, however, (i) no such report or study shall be required until at least three (3) years have elapsed following the date Assessments begin to accrue; and (ii) the results of any such studies and reports shall be advisory only and the Board shall have the right to provide for reserves which are greater or less than those shown in the study; and (iii) in establishing replacement and repair reserves for the Association, in addition to the recommendations of any such studies or reports and other relevant factors, the Board may take into account (a) the amount of Annual Assessments for the Property as compared to other comparable developments; (b) the past incidences of required repairs at the Property; and (c) projected funds available to the Association pursuant to the Working Capital Fees paid pursuant to this Declaration.
- (e) *Exemption for Declarant.* So long as there is a Class B membership in the Association, the Class B Member shall not be required to pay any Assessment for Lots owned by the

Class B Member but instead may pay the operating deficiencies of the Association as set forth herein. When the Class B membership ceases, Declarant shall pay the Assessments for Lots owned by Declarant as is payable for Lots owned by Class A Members. If a Lot ceases to qualify for the exemption granted herein to Declarant during the period to which an Assessment is attributable, the Assessment shall be prorated between the applicable rates on the basis of the number of months in the applicable Assessment period that Lots owned by Declarant qualified for each rate.

- (f) *Obligation of Declarant for Deficiencies.* Unless Declarant elects to waive its exemption from paying Assessments as provided herein while it is a Class B Member, so long as there is a Class B membership in the Association, the Class B Member shall pay and contribute to the Association, as such funds are required by the Association, such funds as may be necessary when added to the Annual Assessments levied by the Association on all Class A Members, to pay all common expenses of the Association as they become due; provided, however, the obligation of the Class B Member to pay such amounts shall not exceed the amounts that otherwise would have been assessed against Lots owned by the Class B Member if the Class B Member had been a Class A Member. Amounts paid direct by the Class B Member to Association creditors, or assets purchased by a Class B Member of the Association, shall apply against the obligations of the Class B Member to pay its share of deficiencies in common expenses. Furthermore, Declarant's payment obligations under this Section may be satisfied in the form of "in kind" contributions of services or materials, or a combination of both.
- 4.3.1 **SURPLUS FUNDS:** The Association shall not be obligated to spend in any year all the Assessments and other sums received Unofficial Document such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.
- 4.3.2 **WORKING CAPITAL FUND:** To insure that the association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each purchaser of a lot from the Declarant shall pay to the Association immediately upon becoming the Owner of the Lot, a sum equal to one-sixth (1/6th) of the current Annual Assessment for the Lot. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under the project Documents. Payments made pursuant to this Section shall be non-refundable and shall not be considered as an advance payment of any Assessment levied by the Association pursuant to this Declaration.
- 4.3.3 **TRANSFER FEE:** Each Purchaser of a lot shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the board.
- 4.4 **SPECIAL ASSESSMENTS:** In addition to the annual assessments authorized above, the Association may levy, in any fiscal year, a special assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Area, including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that any

such special assessment shall have the assent of Members having at least two thirds (2/3) of the votes entitled to be cast by each class of Members who are voting in person or by proxy at a meeting duly called for such purpose.

- 4.5 NOTICE and QUORUM for ANY ACTION AUTHORIZED UNDER SECTIONS 4.3 (a) or 4.4: Written notice of any meeting called for the purpose of taking any action authorized under Section 4.3 (a) or 4.4 shall be sent to all Members not less than thirty (30) days nor more than fifty (50) in advance of the meeting. At the first such meeting called, the presence of Members or of Proxies entitled to cast twenty-five (25%) percent of all votes of each class of Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice shall be one-half (1/2) of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.
- 4.6 DATE of COMMENCEMENT of ANNUAL ASSESSMENTS; DUE DATES; Unless otherwise determined by the Board, annual assessments shall be paid within thirty (30) days of written notice of annual assessment dues. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid and through what date they are paid.
- 4.7 UNIFORM RATE of ASSESSMENT: Except as provided herein, both annual and special assessments must be fixed at a uniform rate for all assessable once Occupied Lots and at a uniform rate for all assessable Never Occupied Lots. The rate for Never Occupied Lots (NOL's) shall be twenty-five (25%) percent of the rate for Once Occupied Lots. The status of a Lot as Never Occupied or Once Occupied shall be determined as of the date an assessment is due. As long as there is a Class B membership Unofficial Document it shall not be subject to assessments for Lots not sold to individual Purchasers, but instead shall be required to pay the difference between actual operating costs for the Association and all income from assessments and other sources. When the Class B membership ceases as prescribed in Section 3.7 herein, Declarant shall become a Class A member and shall be subject to assessment for each Lot owned by Declarant as described in this Section.
- 4.8 USE ASSESSMENTS: If the Board determines that certain services provided by the Association benefit the Lots in a disproportionate manner or if a Member or Members owning one or more Lots contract with the Association for the Association to provide particular services with regard to such Lots, the Board shall be entitled to assess use assessments against such benefited Memberships. The amount of any use assessments shall be determined in a manner consistent with the Board's determination of the respective benefits each Lot receives from such service.
- 4.9 EFFECT of NONPAYMENT of ASSESSMENTS; REMEDIES of the ASSOCIATION: Any Assessment, or any installment of an assessment, not paid within fifteen (15) days after the Assessment or the installment of the Assessment, first became due shall bear interest from the due date at the rate of twelve (12%) percent per annum or the prevailing FHA/VA interest rate for new home loans, whichever is higher, or in the alternative, at such rate as may be set by the Board. In addition to the interest charges, there shall be a late fee of fifteen (\$15.00) dollars per month for each month any Assessments or installments thereof remain delinquent.

Any Assessment, or any installment of an Assessment, that is delinquent shall become a continuing lien on the Lot against which such Assessment was made.

The lien shall be perfected by the recordation of a "Notice of Claim of Lien" that shall set forth: (1) the name of the delinquent Owner as shown on records of the Association; (2) the legal description or street address of the Lot against which the claim of lien is made; (3) the amount claimed as of the date of the recording of the notice including interest, late fees, lien recording fees and reasonable attorney's fees; and (4) the name and address of the Association. The Association's lien shall have priority over all liens or claims created subsequent to the recordation of this Declaration except for tax liens for real property taxes on the Lot, assessments on any Lot in favor of any municipal or other governmental body and the liens that are specifically described in Section 4.10 of this Declaration.

Before recording a lien against any Lot the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments together with interest and other allowable charges, stating the date due and the amount of the delinquency through that date. Each default shall constitute a separate basis for a demand or claim of lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, the Association may proceed with recording a Notice of Claim of Lien against the Lot of the defaulting Owner. The Association shall not be obligated to release any lien recorded pursuant to this Section until all delinquent Assessments, interest, late charges, lien fees, collection costs and reasonable attorney's fees have been paid in full whether or not all of such amounts are set forth in the Notice of Claim of Lien.

The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, late charges, lien fees, reasonable attorney's fees and any other sums due to the Association in any manner allowed by law including, but not limited to: (a) bringing an action at law against <sup>Unofficial Document</sup> or personally obligated to pay the delinquent Assessments and such action may be brought without waiving any lien securing any such delinquent Assessments; or (b) bringing an action to foreclose its lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

- 4.10 SUBORDINATION of the LIEN to MORTGAGES: The lien of the Association for delinquent Assessments provided for in this Declaration shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or non-judicial foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such Assessment as to payments that become due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any Assessments thereafter becoming due or from the lien thereof.
- 4.11 EXEMPTION of OWNER: No Owner of a Lot may exempt himself from liability for Assessments levied against his Lot or for other amounts which he may owe to the Association under the Project Documents by waiver and non-use of any of the Common Area and facilities or by the abandonment of his Lot.
- 4.12 TRANSFER FEE: Each purchaser of a Lot, except for a Person who initially purchases a Lot from Declarant, shall pay to the Association immediately upon becoming the Owner of the Lot a reasonable transfer fee in an amount previously agreed to by the board of directors. Said amount shall be used by the Association in connection with such transfer and to supplement the Association's Reserve Fund. The transfer fee shall be in addition to, and shall not be offset